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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. ARTHUR LVONNE BONNER, Defendant and Appellant.	B211269 (Los Angeles County Super. Ct. No. SA 056750)

Appeal from a judgment of the Superior Court for the County of Los Angeles. Cynthia Rayvis, Judge. Affirmed.

Matthew Alger, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, and Erika D. Jackson, Deputy Attorney General, for Plaintiff and Respondent.

SUMMARY

Arthur Dvonne Bonner killed Angel Dews in the bedroom of their apartment by manual strangulation. His defense, which was supported by expert testimony, was that he had suffered a particular form of epileptic seizure that rendered him unconscious of what he was doing. The jury convicted Bonner of murder in the second degree, and he was sentenced to 15 years to life for the murder, plus a five-year enhancement for a prior serious felony conviction.

On appeal, Bonner contends that his several motions for a mistrial should have been granted, based on a discovery violation by the prosecutor and improper admission of hearsay evidence resulting in incurable prejudice. He contends that the trial court committed prejudicial error by failing to instruct the jury on the unreasonable self-defense form of voluntary manslaughter. He also contends that his admission that he suffered a prior conviction was constitutionally insufficient to support the imposition of a five-year enhancement for a serious felony under Penal Code section 667, subdivision (a)(1).[1]

We find no error in the judgment of conviction and accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 13, 2005, Bonner killed Angel Dews, the mother of two girls, Ketera H. (who was twelve years old at the time), and Bonner's then-four-year old daughter Kania. The evidence adduced at his trial in April, 2008, included the following:

After school on the day of the murder, Ketera went to the home of a friend, Shaniece Hunter. The two girls wanted to stay overnight at Shaniece's house, and after getting permission from Shaniece's mother, they walked to Ketera's home to get her clothes. On the way, Ketera telephoned her mother to ask her to pick the girls up, but Dews said her car was not working. When they arrived at Ketera's apartment building, Ketera pressed the buzzer for their apartment. No one answered, so she rang a neighbor

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[1] All statutory references are to the Penal Code, unless otherwise specified.

who buzzed her in. The door to the apartment was slightly open and Kania was in the living room. Ketera went to her bedroom and began gathering personal belongings. Dews's bedroom door was closed and locked. Ketera knocked and called for her mother, intending to ask her for a toothbrush. Dews did not respond, but Bonner called out words to the effect that they were busy. Ketera went to her bedroom, talked with Shaniece, and then returned to her mother's bedroom door and knocked again. This time Bonner said, again from inside Dews's bedroom, that her mother was not there. Ketera thought something was wrong and, after speaking with four-year-old Kania, who had started crying, Ketera used a kitchen knife to try to open the locked bedroom door. She could not do so. Both Ketera and Shaniece went outside the apartment to try to look in through the bedroom window, but the blinds were closed.

Using Ketera's cell phone, Shaniece called her mother and then dialed 911. Hawthorne police officers Robert Storey and David Gregor responded, arriving shortly after 6:00 p.m. One of the officers spoke briefly with Ketera, who along with Kania and Shaniece had gone to a neighbor's apartment. The officers went to Dews's apartment, knocked and announced themselves, and entered after they had received no response. Then they repeatedly knocked on the locked bedroom door. Eventually, Bonner opened the door. Officer Storey asked Bonner what was going on, and Bonner said everything was okay. Dews was lying on the bed with her right arm draped over her face. Bonner said she was sleeping, and the officers asked him to wake Dews up. Bonner grabbed her foot, vigorously shook it and told her to wake up, but she did not respond.

Bonner was directed to step into the living room, and Officer Gregor moved Dews's arm away from her face. He discovered she had red marks around her neck, blood around her nose, and no pulse. Paramedics were summoned, but they were unable to revive Dews.

Bonner was taken into custody. At the police station, photographs were taken of Bonner's cut lip and scratch marks on his hands, chest and left shoulder. Later that evening, a crime scene investigator saw an open suitcase in front of the refrigerator in the kitchen.

Bonner waived his *Miranda* rights and was interviewed the following afternoon. The interview was recorded on videotape and shown to the jury. Bonner initially told the detectives that he had had a minor argument with Dews, because she wanted to buy a car and he refused to cosign for it. He had left the apartment to buy some cigarettes, and when he returned, Dews was in bed. He got into bed with Dews and went to sleep. Then, while he was dozing off, Ketera had knocked on the door, and he told her, "We're sleeping." When Bonner woke up, police officers were at the door, and he claimed that he did not know what had occurred during the interim. The suitcase was in the kitchen, he explained, because he was going to stay with his mother for a week. Bonner denied that Dews had told him to move out of the apartment and said he had received the scratches on his chest when he had experienced a seizure and had fallen down a few days earlier.

After detectives told Bonner they thought Dews's death was either accidental or that Bonner was a cold-blooded killer, Bonner admitted that he and Dews had argued and he had put his hands on her, but "[i]t wasn't even a choke." He had done so because she attacked him and was yelling and screaming at him. Bonner said he "was defending myself from her," and his hands were on her shoulders when he was trying to hold her down. "[T]he only thing I did … was protecting myself from her because she was – it was more or less she was attacking me, and I'm protecting myself from her, and I'm pushing her away from me." He said he didn't know how she got blood on her face, but maybe it was because he had pushed her. Bonner said he didn't realize Dews had stopped breathing. He got up and went into the living room, and when he returned to the bedroom, he thought she had just gone to sleep.

The deputy medical examiner who conducted the autopsy concluded that Dews's death was due to manual strangulation and she had struggled before she died. He testified that death by manual strangulation can take from perhaps 30 seconds "out even to a few minutes," and he opined that the amount of time required to cause Dews's death was "probably a couple minutes at least."

Several witnesses testified about the status of the relationship between Bonner and Dews:

- Hallie Markham. Ms. Markham is Dews's mother; she lived in Kentucky. A week before Dews's death, she had had a telephone conversation with her daughter. During the conversation, Bonner picked up the telephone and told Markham that he and Dews were going to be married. Dews said "No, we're not," and added that she and Bonner were no longer together. Bonner said that Dews had been cheating on him. Markham told Bonner that Dews couldn't be cheating on him because they were no longer together. (Markham did not reveal this telephone conversation until she was interviewed two days before the trial, and the trial court ruled Markham's testimony about the conversation would be admissible. But Bonner's "cheating on him" statement was not in the report of Markham's interview.)[2]

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[2] The testimony preceding the "cheating on him" testimony was this. Markham had been talking to her daughter, who was upset and wanted to borrow some money because her car "was messed up." She was supposed to be coming to Kentucky in June for a mother/daughter annual visit. Bonner picked up the phone and said he wanted to come for the visit as well and that "they were going to get married and do all this stuff. She [Dews] was hollering in the background, 'No, we're not.' And they wasn't together." The testimony continued:

"Q You could hear her [*sic*] daughter saying that in the background?

"A Yeah. And he said, 'She don't know what she's talking about.' And she was saying in the background, 'Yes, I do.'"

"Q Did the defendant say anything else about his relationship with your daughter?

"A Other than they was going to get married and they was doing a lot of things, and she was saying no, they wasn't.

- Shawanna Hunter. Hunter was Shaniece's mother. She and Dews had become friends as a result of their daughters' friendship. Dews told Hunter that she no longer wanted a relationship with Bonner and had asked him to leave on several occasions. Hunter had been on the telephone with Dews and had heard Dews arguing with Bonner and telling him to leave. Dews told Hunter she was seeing someone named Chris and that she (Dews) had told Bonner about this new relationship. Hunter also testified about a telephone conversation with Dews (which may have occurred a month or two before Dews's death) during which Hunter had heard Dews arguing with Bonner and telling Bonner that Chris could call her because Bonner would be leaving since they were no longer together. Bonner had said he was never going to leave. On the morning of her death, Dews told Hunter that Bonner was finally leaving. (Hunter told Detective Robinson, on the night Dews died, that Dews was supposed to have ended her relationship

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"Q Do you remember, besides the defendant saying that he was going to get married, what other things the defendant was talking about with you?

"A Well, he got a little upset. He was saying that my daughter was cheating on him and I told him they're [Bonner and Dews] not together."

At this point, defense counsel objected, and this exchange took place at a sidebar:

"Mr. Rich: I thought we were limiting this to the conversation about the motive being about the car.

"The Court: That's true. The comment just made by the witness does appear to go to motive.

"Mr. Rich: But again, it's a motive I've had no opportunity –

"The Court: Exactly. She did not mention it before she mentioned it to Ms. Chen today. I think you can cross-examine her on that. It comes up for the first time today. If it were in another part of the interview and I ruled against it, that's a different thing. But had it been in the interview, I would have let it in. It goes to the defendant's state of mind."

with Bonner on the previous Friday. According to Robinson, Hunter did not mention that Dews was involved in another relationship.)

The defense made several motions for a mistrial, all of which were denied. The first was in connection with Markham's testimony that Bonner said Dews was cheating on him. Counsel argued there had been no discovery as to that testimony, which created a motive for murder (which counsel said in opening did not exist) and no opportunity to investigate it. Several other mistrial motions were made in connection with Hunter's testimony that Dews had told her that she (Dews) told Bonner that she was involved with another man and wanted Bonner to move out.

The defense presented testimony that Bonner had mesial temporal lobe epilepsy caused by a lesion on his brain, and that as a consequence, he was subject to seizures. Several witnesses testified to Bonner's seizures, including a then-employee of the Palos Verdes Butterfly Conservancy, where Bonner worked, and a bus driver who regularly saw Bonner. Bonner's acquaintances at work and the bus driver testified they had never known him to be violent. His co-workers found him to be caring and gentle.

The defense presented expert testimony to the effect that seizures caused by Bonner's form of epilepsy usually result in a loss of consciousness, followed by a period of confusion that can last several minutes or several hours, during which the person cannot control his or her thinking and movement. The person may become violent, but afterward the person may have little or no memory of what happened and may be unaware a seizure had occurred.

Bonner was convicted of second degree murder, and he admitted a 1988 conviction for a violation of section 245, subdivision (a)(1) (assault with a deadly weapon or by force likely to produce great bodily injury), which was alleged both as a strike and as a prior serious felony conviction that would subject Bonner to a five-year sentence enhancement. (§ 667, subd. (a)(1).)

Bonner moved for a new trial, based on the erroneous admission of previously unknown hearsay evidence of a motive by Bonner to kill Dews after counsel had said in opening statement that the only evidence of motive was an argument about buying a new

car. The trial court denied the motion. The court concluded the jury should *not* have heard Hunter's testimony that Dews had told her the name of her boyfriend (Chris) and that he worked with the victim, but that Bonner's statements (which Hunter had heard directly on the telephone) were admissible, as were Dews's statements in response because they gave context to what Bonner had said.

The jury heard the 911 call in which Ketera had referred to Bonner as Dews's ex-boyfriend and had said that he was not supposed to be at the house. The jury also saw a photograph of a suitcase with Bonner's clothes in it. The court observed that, "[s]ince the jury heard [Bonner's] statements to [Dews] that he was never going to leave, it appears that the information about the name of [Dews's] boyfriend and where he worked is not sufficiently prejudicial to grant [Bonner's] motion." And, the improper testimony was cumulative, because Markham testified that she heard the defendant say Dews was cheating on him.

The trial court granted Bonner's motion to strike the strike, observing Bonner had been a productive and contributing member of society between the time of his conviction as a teenager in 1988 and this incident in June, 2005. The court sentenced Bonner to a term of 20 years to life, consisting of 15 years to life for the second degree murder, plus a five-year prior serious felony enhancement as required under section 667, subdivision (a)(1). The court made various other orders not at issue here, and Bonner filed a timely notice of appeal.

DISCUSSION

Bonner asserts the trial court committed reversible error when it denied Bonner's mistrial motions and when it failed to instruct the jury on unreasonable self-defense. He also contends the record does not reflect that he knowingly and intelligently admitted that his prior conviction was for a serious felony, so that the admission was insufficient to support the five-year enhancement. We find no merit in any of Bonner's contentions.

1. The trial court did not abuse its discretion in denying Bonner's mistrial motions.

We apply a deferential abuse of discretion standard in reviewing rulings on motions for mistrial. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1068. "'A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions. [Citation.]'" (*Ibid.*) Thus "the motion for mistrial presupposes error plus incurable prejudice." (*People v. Woodberry* (1970) 10 Cal.App.3d 695, 708.)

Bonner argues that it was error to admit (a) Markham's testimony that Bonner told her that Dews was cheating on him, as well as (b) Hunter's testimony that Dews told her that Dews had started a relationship with someone named Chris and had told Bonner of the relationship. The testimony was erroneously admitted, Bonner claims, because the prosecutor violated her discovery obligations by failing to disclose those statements to the defense before eliciting the testimony in court. In the case of Hunter's testimony, appellant further objected because it was hearsay. The testimony was prejudicial, Bonner contends, because his counsel was "completely hamstrung" after having made an opening statement that "the best evidence that the prosecution is going to present for motive is they argued about whether [Bonner] should co-sign for a new car."

We do not agree with Bonner's analysis. There was no error in the admission of Markham's testimony, and no incurable prejudice resulted from admitting any of the disputed evidence. We briefly review the discovery violation issue before turning to the testimony.

A prosecutor is required to disclose to the defense "[r]elevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial …." (§ 1054.1, subd. (f).) With certain irrelevant exceptions, disclosure is to be made "immediately" if information becomes known within 30 days of

trial. (§ 1054.7.) The disclosure requirement includes oral statements: In *Roland v. Superior Court* (2004) 124 Cal.App.4th 154, the court held that the reciprocal disclosure obligation, imposed on defense counsel by section 1054.3, means that counsel must disclose "*any* relevant statements made by those intended witnesses, including oral statements they have made directly to defense counsel." (*Roland v. Superior Court*, at pp. 166, 165 ["[i]nterpreting section 1054.3, and concomitantly section 1054.1, to include witnesses' oral statements contained in oral reports to counsel will help ensure that both parties receive the maximum possible amount of information with which to prepare their cases, which in turn facilitates the ascertainment of the truth at trial"].)

a. Markham's testimony

We cannot conclude there was a discovery violation with respect to Markham's testimony. Before the trial began, the trial court ruled over the defense's objection that Markham's testimony about the three-way telephone conversation with Dews and Bonner would be admissible. Argument on the point proceeded this way:

- Markham had told the prosecutor (and Detective Lane) about the conversation on Monday, April 7, 2008, the day before trial began, and the prosecutor told the court and the defense about the conversation that same afternoon. The prosecutor explained to the court, "And it sounded like the gist of the conversation was that there was some type of argument between the victim and the defendant. And Ms. Markham said that her daughter, [Dews], wanted to break up with the defendant and the defendant said something about how that was not going to happen or that [Dews] was just upset, or words to that effect." The court asked if there was a written report of the interview with Markham (as "Mr. Rich [defense counsel] has a right to know what was said"), and the prosecutor said, "not yet," but she would ask Detective Lane to prepare one.
- Jury selection began the following day, Tuesday, and the next day, Wednesday, April 9th, there was further discussion about Markham's testimony. Defense counsel had received Detective Lane's report of the

interview with Markham and again objected, saying that Markham had been in touch with law enforcement since 2005 and "now while we're picking a jury, she comes up with this information about her daughter was involved with someone else." The court asked for a copy of the interview report and said it would address the matter before testimony began.

- Later that day, after the jury panel was sworn, the court returned to the Markham interview report and asked the prosecutor what statements she sought to introduce. The prosecutor said, "specifically what I'm asking Ms. Markham is about the phone conversation she had with her daughter … where it seemed from Ms. Markham's point of view that Ms. Dews and the defendant were arguing because they would each grab the phone and take turns talking to Ms. Markham. [¶] I'm asking for that conversation to come in." Defense counsel objected on grounds of late discovery (referring to the fact that Markham could have given this information to police in 2005 and he'd had no opportunity to investigate). The prosecutor observed that the defense's remedy to this late-discovered testimony "would be to seek a continuance if he wanted one, which he could have."[3]
- The next morning, Thursday, April 10, the court ruled Markham's testimony about the telephone conversation was "relevant as to motive" and admissible because Bonner had been part of the conversation and heard the victim's statement. The court said, "I don't find it substantially more prejudicial than probative under [Evidence Code section] 352."

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[3] Much of the discussion was interspersed with discussion of the admissibility of testimony about a message on Markham's answering machine about Dews's car, as well as the prosecutor's proposed testimony from another new witness, a close friend and co-worker of Dews, who would have testified as to "how her relationship with the defendant was going," and that the victim (Dews) told him (the prospective witness) that Bonner had said if he ever caught a woman cheating on him, he would kill her. The trial court refused to allow this testimony.

- Apparently, the report of Markham's interview did not contain the statement she made at trial that Bonner said Dews was cheating on him.

Bonner argues that the prosecutor knew that Markham would testify to the "cheating on him" statement, and that the trial court "ruled that Ms. Markham could testify only about the subject of Ms. Dews desire to buy another car." There is nothing in the record to support the latter claim, nor is there any evidence the prosecutor knew about the "cheating on him" statement before Markham testified. Indeed, the trial court stated otherwise: "[Markham] did not mention it before she mentioned it to Ms. Chen today. I think you can cross-examine her on that. It comes up for the first time today." The court reiterated the point on a later occasion: "when Ms. Markham made a statement on the stand, it was the first time anybody had ever heard of it." In short, the record does not support Bonner's claim of a discovery violation as to Markham's testimony.

b. Hunter's testimony

Hunter's testimony – that Dews told her that Dews had started a relationship with someone named Chris and had told Bonner of the relationship – is another matter. The prosecutor admitted that Hunter had told her the previous week about Dews's statement that she (Dews) had told Bonner that she was seeing someone else, and the trial court questioned the prosecutor about why she had not told defense counsel.[4] Ultimately,

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[4] When the admissibility of Hunter's testimony was discussed at sidebar, the following exchange took place:

> "MS. CHEN: I met Ms. Hunter briefly last week. She said something about [Dews] having said that. I haven't really had a chance to fully interview her about that.
>
> "THE COURT: So she told you that Angel [Dews] said that she told the defendant she was seeing someone?
>
> "MS. CHEN: Yes.
>
> "THE COURT: That's not in any report?

however, the trial court apparently concluded that any discovery violation was not sanctionable by exclusion of the evidence. The prosecutor pointed out, and the court confirmed, that the defense knew that Hunter had told the police that "the victim was not happy in her relationship with the defendant," and that Bonner "was neither emotionally nor financially helping Angel Dews …." The prosecutor urged that "sometimes when witnesses come to court to testify or when they're interviewed before testimony … new facts come out," and "[i]t's not because of any malfeasance on any party's part." The court stated, "I think Ms. Chen is correct."

While it appears from the record that the prosecutor delayed in disclosing Hunter's testimony, the testimony in any event was inadmissible as hearsay (as the trial court ultimately concluded when it ruled on Bonner's motion for a new trial). The pertinent question becomes whether admitting the testimony was prejudicial. We conclude it was not.

Bonner insists that because his counsel relied on the state of the record in his opening statement (which then contained no indication that Dews was involved with another man and Bonner knew about it), the admission of the new evidence of motive was "so unfair as to deprive [Bonner] of a fair trial," and if the jury had not heard the

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"MS. CHEN: No.

"THE COURT: Any reason you didn't tell Mr. Rich about that a week ago?

"MS. CHEN: I thought I mentioned that at side bar the end of last week when I said about Ms. Hunter's statement. And you had asked if there was a discovery issue with Ms. Hunter and I said no, because the defense attorney knew about Ms. Hunter as a witness."

[¶ … ¶]

"THE COURT: … This is a little different [from the Markham testimony] only because when Ms. Markham made a statement on the stand, it was the first time anybody had ever heard of it. This is something you've known for a week.

"MS. CHEN: Well, I don't think it's been a week."

improper evidence of "a much more substantial motive," there is a reasonable probability that "the jury would have found that [Bonner's] epilepsy/unconsciousness defense created reasonable doubt about the question of his guilt." Bonner likens these circumstances to *People v. Coleman* (1992) 9 Cal.App.4th 493, where defense counsel misstated the evidence in her opening statement and the Court of Appeal reversed the judgment because the trial judge failed to grant a mistrial. (*Id.* at p. 494.)

Coleman does not assist Bonner, because the circumstances were entirely different. Urging a manslaughter verdict in her opening statement, defense counsel told the jury that the defendant had pointed a gun at the victim and, when the victim made a sudden move, pulled the trigger. At trial (after mistrial was denied and new defense counsel was substituted), defendant testified that he did not aim the gun or pull the trigger and that the gun fired accidentally. (*Id.* at p. 495, fn. 1.) The court held that defense counsel's misstatement of the evidence in her opening statement "undermined [defendant's] credibility" and caused a "breakdown in the relationship between [defendant] and his counsel [which] frustrated the realization of a fair trial." (*Id.* at pp. 496-497.) The substitution of counsel was an inappropriate remedy, and the prejudice was "incalculable," because the jury was "understandably left with the impression that [defendant] had changed stories between defense counsel." (*Id.* at p. 497.) The circumstances here are not remotely like those in *Coleman*.

Here, as the trial court pointed out, Hunter's testimony to the effect that Bonner knew Dews was seeing another man was cumulative of other admissible testimony. The jury properly heard Markham's testimony to the effect that Bonner thought Dews was cheating on him. Further, Hunter testified (in addition to the disputed testimony) to an argument between Dews and Bonner while she was on the telephone with Dews, perhaps a month or two before Dews died (Hunter could not really remember the timing). She heard Dews say, among other things, that Bonner "could not tell her who cannot call her house" and Bonner "was going to be leaving and that they were no longer together." Hunter then heard Bonner answer, telling Dews "he's never going to leave. And she was telling him that he was leaving, that he was going to leave. It was her house and he was

going to leave." Bonner does not dispute that this latter evidence was properly admitted. In addition, the jury heard other properly admitted evidence about the relationship between Dews and Bonner, including the 911 call in which Ketera referred to Bonner as Dews's ex-boyfriend and said he was not supposed to be in the house. The jury also saw a photograph of a suitcase containing the defendant's clothes. The suitcase was in front of the refrigerator in the kitchen of Dews's apartment.

Bonner insists that because counsel was unaware when he made his opening statement that there would be testimony that Bonner knew of Dews's relationship with another man, the only way to rectify the harm was to grant a mistrial. In a new trial, the prosecutor could again present the testimony "but without the incurably prejudicial effect of defense counsel's representation in his opening statement that the only evidence of motive was the argument" over the car. The trial court is vested with "considerable discretion" in ruling on mistrial motions (*People v. Wallace, supra*, 44 Cal.4th at p. 1068), and an abuse of discretion occurs if, under all the circumstances, the trial court's decision results in a miscarriage of justice. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) Under the circumstances of this case, we see no basis for concluding that the erroneous admission of the challenged testimony "was so unfair as to deprive [Bonner] of a fair trial"; nor can we conclude "that it is reasonably probable that a result more favorable to [Bonner] would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

2. The trial court did not err in failing to instruct the jury on imperfect self-defense.

Bonner next claims the trial court committed prejudicial error when it failed to instruct the jury on imperfect self-defense. We find no error.

"In a murder case, trial courts are obligated to instruct the jury on defenses supported by substantial evidence that could lead to conviction of the lesser included offense of voluntary manslaughter, even where the defendant objects, or is not, as a matter of trial strategy, relying on such a defense." (*People v. Moye* (2009) 47 Cal.4th

537, 541.) If a trial court has erred in failing to give such an instruction, the error is reviewed under the standard stated in *People v. Watson, supra*, 46 Cal.2d at p. 836, that is, the error is harmless if, "[u]pon examining the entire cause …including the evidence … it is not 'reasonably probable' defendant would have obtained a 'more favorable' outcome had the instructional error not occurred." (*People v. Moye, supra*, 47 Cal.4th at p. 541.)

Here, Bonner claims that there was substantial evidence in the record to support an instruction on voluntary manslaughter based on imperfect self-defense. Imperfect self-defense is the "honest but unreasonable belief that it is necessary to defend oneself from imminent peril to life or great bodily injury . . . . (*People v. Rogers* (2006) 39 Cal.4th 826, 883.) The "honest but unreasonable belief" negates malice aforethought, the mental element necessary for murder, "'so that the chargeable offense is reduced to manslaughter.'" (*Ibid.*) The Supreme Court has "cautioned" that imperfect self-defense is a narrow doctrine, and "will apply only when the defendant has an actual belief in the need for self-defense and only when the defendant fears immediate harm that ""'*must be instantly dealt with*.'"" (*Ibid.*) A trial court's duty to instruct on this theory "arises 'whenever the evidence is such that a jury could reasonably conclude that the defendant killed the victim in the unreasonable but good faith belief in having to act in self-defense.'" (*Ibid.*) "'[T]he existence of "*any* evidence, no matter how weak" will not justify instructions on a lesser included offense, but such instructions are required whenever evidence that the defendant is guilty only of the lesser offense is "substantial enough to merit consideration" by the jury. [Citations.] "Substantial evidence" in this context is '"evidence from which a jury composed of reasonable [persons] could … conclude[]'" that the lesser offense, but not the greater, was committed. [Citations.]' [Citation.]" (*People v. Moye, supra*, 47 Cal.4th at p. 553.)

As substantial evidence that he honestly believed that it was necessary to defend himself from "imminent peril to life" or great bodily injury by Dews, Bonner cites statements he made to the police at various points during his interrogation. These statements, which we reproduce in the margin, were that 1) Dews "attacked" him when

they were arguing over his refusal to co-sign for a new car; 2) Dews pushed him against the wall, he pushed back, and they fell on the bed and "rassled"; 3) Bonner held her down and repeatedly asked her why she wouldn't stop fighting; 4) Bonner thought he was holding her down by the shoulders and didn't remember putting his hands on her neck; 5) he didn't want to hurt her; he was defending himself from her; 6) he had to use a lot of force because she was not a weak person (she was five feet eight and weighed 185 pounds, while Bonner was six feet two and weighed 177); and 7) Dews was hitting and scratching him while he was holding her down.[5] Bonner claims given the respective

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[5] Thus:

- When he told Dews he would not co-sign for a new car, "She attacked me. Mad at me; yelling and screaming at me. [¶…¶] So I said, 'Angel,' I said, 'look, stop.' I said, 'I'm not trying to fight you.' I said, 'I don't need to be trying to fight you.' [¶] So, Kania [their daughter] came. I told Kania, I said, 'Kania, go back in the room.' I said, 'Your mama is acting right now.' … I said, 'Go in there and sit down."

- Bonner told the police that he and Dews "got to arguing" over the car:

  "A And she got to calling me worthless and sorry and all that and that ….
  "Q Yeah, and that –
  "A And I just, actually just – I didn't even choke her.
  "Q Huh-huh.
  "A It wasn't even a choke.
  "Q Well, what ha- -- what – what'd you do? Show me to yourself what you did?
  "A It was just a – a, like – like, hand, like, here, and just push.
  "Q On the bed?
  "A Yeah.
  "Q Okay. And then what happened?
  "A And then she got up, and she – uh – that's when she rushed towards me.
  "Q Huh-huh?
  "A And she – she got to hitting and got to hitting and – and got to hitting me, or whatever. So we got to rassling in the bed, or whatever. We got to rassling –

"Q Huh-huh.
"A – around in the bed. We was rassling.
"Q Okay
"A We got to rassling in the bed. I – I pushed her. I pushed her and was trying to hold her down.
"Q Okay
"A I was trying to hold her down.
"Q Where were your hands on her when you're trying to –
"A On her shoulders.
"Q Okay.
"A On her shoulders.
"Q Okay.
"A I was trying to hold her down –
"Q Okay.
"A – because she was trying to push me. … She's mad at me ….
[¶]. . . [¶]
"A And so she was – she was a violent person. Ain't, you know, she fought a lot. She argued a lot.
"Q Okay.
"A If things wouldn't go her way, then she would get mad and start arguments about it.
[¶]. . . [¶]
"A And, as I say, what happened yesterday –
"Q So –
"A – was only a way – uh – was a way of me protecting myself from her and, maybe I was just a – a little more overpowered than her –
"Q Okay.
"A – because of me holding her down, me being the male, holding her down.
"Q Okay. Is that how you got the scratches on your hand and chest, was from her attacking you?
"A Yeah.
"Q Okay.
"A Me protecting myself, because Ang- – Angel has been violent with me before.
"Q Okay.
"A She's been violent with me before.
[¶]. . . [¶]
"A And, you know, it's, like – she's, like – like, wiggling around in the bed, you know, wiggling and wiggling, and we both just rolling, moving.
"Q How did she get the blood on her face?
"A I don't know. I – I –

"Q Did – did – did you – did you accidentally punch at one point or –
"A – I –
"Q – did you push her away?
"A I – I – well, I did push her. Maybe that's when – how she got blood on her face, 'cause I did push her.
"Q Yeah. Now, like, how was that? Was she coming at you –
"A I didn't punch her.
"Q – can you kinda show me what you did? Do you know? Do you remember?
"A When she came – when she came towards me, I pushed with both hands, like that. I just –
"Q Did – in – in the face area or in the chest?
"A I don't know. It – it was like this, "Get off of me."
"Q Okay. How long –
"A It was just, get-away-from-me.
"Q – were you at – how long do you think your hands were on her shoulders –
"A I don't know.
"Q – keeping her down?
"A Eric, I don't know, man.
[¶]. . . [¶]
"Q – at one point, did you realize that she had stopped breathing?
"A No, 'cause I – I – I got up and – and left, after. I just got up and just walked off …."

- Bonner then said, "I didn't – I didn't hurt her. I didn't want to hurt her. I was defending myself from her." And later, "I didn't mean to hurt her."

- "It [what happened] was a – it was a accident. We got into it. It was a – it was a argument, you know, and she was mad because, you know, I didn't want to co-sign for her with no car."

- "But I'm gonna tell you now, Eric, the only thing I did, yesterday, was protecting myself from her because she was – it was more or less she was attacking me, and I'm protecting myself from her, and I'm pushing her away from me." And, "… I'm gonna tell you, I didn't hit – I didn't hit her with anything." "And I didn't hit her with anything, and that's what I wouldn't do."

- When the police asked "why you needed to use so much of your strength to protect yourself from a woman that you love," Bonner said, "Because she's not a – a weak person. She's a strong person."

sizes of Bonner and Dews, the jury could have concluded that Bonner could have believed, albeit unreasonably, "that he needed to use all the force he could muster in order to protect himself from a risk of death from Ms. Dews' attack," and the jury "could reasonably have rejected [his] previous statements that he was asleep or had no memory of what happened …, and chosen to believe his statements that he was acting in self-defense as the true version of the facts."

After reviewing the evidence Bonner cites, we conclude that no reasonable jury could find that Bonner killed Dews in a good faith, but unreasonable, belief that he had to

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- Bonner said he was "up against the wall, at first," then he pushed Dews, and when she fell down on the bed, "she was getting back up, coming towards me, and I grabbed her to hold her down …." Bonner was "trying to tell her to stop," and "trying to hold her down." Bonner didn't remember putting his hands on her neck.

- Then police asked, "was she trying to tell you to stop, get off me, sl- – uh – slapping you, any of that?" and Bonner replied:

  "A "[Unintelligible] it was – it was – it was her attacking me.
  "Q I know, but you're trying to hold her down –
  "A Mmnh-mmnh.
  "Q – because y- – because you're trying to protect yourself?
  "A Yeah.
  "Q You're trying to prevent her from hurting you, right?
  "A Yeah.
  "Q Well, is she – is she telling you to get off, and is she scratching at you, pushing you, or trying to push you away, or is she just laying there, not –
  "A No. She was just – she was, more or less, like, you know, like, 'Fuck it, you motherfucker. You don't ever want to help me do nothing. Fuck you. You don't ever want to' –
  "Q What, is she just lying there? You're pushing her down, or is she actually –
  "A "I'm holding her down.
  "Q – or is she actually trying to get at you?
  "A She's – I'm holding her down. I'm holding her down, and she's – she's hitting me and scratching me, mad at me, because I don't want to help her get this car, go and get this car."

act in self-defense. None of the statements Bonner cites shows that he believed he was in "imminent peril" (*People v. Rogers, supra*, 39 Cal.4th at p. 883), either of his life or of great bodily injury. His statements that he was "attacked" and was "defending" himself, when read (or heard and seen, as the jury did) along with the surrounding words, show a physical altercation. There is no suggestion whatsoever that Bonner thought he was in any danger of serious harm. Indeed, he said it was an accident, and that he "didn't hit her with anything, and that's what I wouldn't do." These statements are inconsistent with a good faith belief that Dews posed an imminent threat of death or great bodily injury (*People v. Rogers, supra*, 39 Cal.4th at p. 883), and no other statements he made suggested that Bonner entertained any fear of imminent peril to his life or person.

As noted in *People v. Moye*, the existence of """"*any* evidence, no matter how weak""" does not justify instructions on a lesser included offense; instructions are required only if evidence of the lesser offense is "substantial enough to merit consideration" by the jury. (*People v. Moye, supra*, 47 Cal.4th at p. 553.) And as *Rogers* states, imperfect self-defense is a "narrow" doctrine and applies "only when the defendant fears immediate harm that """must be instantly dealt with."""" (*People v. Rogers, supra*, 39 Cal.4th at p. 883.) At no time did Bonner say that he "actually believed he had to kill [Dews] to defend himself from such an imminent threat." (*Ibid.*) We therefore conclude, as in *Rogers*, "there was no substantial evidence from which the jury could have concluded defendant killed [the victim] due to an honest but unreasonable belief that he needed to defend himself from an imminent threat to his life or to his bodily integrity." (*Ibid.*) Consequently, there was no error in failing to instruct on imperfect self-defense.

3. Bonner waived his claim that he did not knowingly and intelligently admit his prior conviction of a serious felony.

Bonner claims the record does not show that he voluntarily and intelligently admitted that his prior conviction was for a serious felony, so the admission was

constitutionally insufficient to support the five-year sentence enhancement. Because Bonner failed to raise this claim at or before sentencing, the claim is waived.

Bonner waived a jury trial and admitted that he suffered a prior conviction, a violation of section 245, subdivision (a)(1), on October 20, 1988, which was alleged as "a special allegation under Penal Code Section 667(a)(1) …." Section 667, subdivision (a)(1) requires a consecutive five-year enhancement for "any person convicted of a serious felony who previously has been convicted of a serious felony …." A "serious felony" means "a serious felony listed in subdivision (c) of Section 1192.7." (§ 667, subd. (a)(4).) Under section 1192.7, not every violation of section 245, subdivision (a)(1) constitutes a serious felony: section 1192.7, subsection (c) lists, as a serious felony, "assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm … in violation of Section 245," while section 245 also penalizes assault "by any means of force likely to produce great bodily injury."[6] (§ 245, subd. (a)(1); *People v. Delgado* (2008) 43 Cal.4th 1059, 1065 ["a conviction under the deadly weapon prong of section 245(a)(1) is a serious felony, but a conviction under the GBI [great bodily injury] prong is not"].)

Bonner contends that the record fails to show that he knew he was admitting that his prior conviction was for a serious felony, nor does the record indicate that he was aware of "what it would take for his prior offense to constitute a 'serious felony.'" He also claims that the record does not indicate that he was aware of the consequences of such an admission. We find the claim is waived because Bonner did not raise it earlier. The colloquy surrounding his admission, in its entirety, was as follows:

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[6] "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment." (§ 245, subd. (a)(1).)

"MS. CHEN: … Mr. Bonner, you understand in the information in case SA056760, it alleges as a special allegation pursuant to Penal Code Section 1170.12(a) through (d) and 667(b) through (i) that you suffered a prior conviction in case No. A973125, a violation of Penal Code Section 245(a)(1) with a conviction date of October 20th, 1988, in Los Angeles County Superior Court.

It's also alleged that that same conviction is a special allegation under Penal code Section 667(a)(1), the same case number, same charge, same conviction date.

Mr. Bonner, do you understand that with respect to this prior conviction you have a right to a jury trial, and specifically that you have the right to have that trial before the same jury and you have all the rights that go with that, the right to confront and cross-examine witnesses, the right to present a defense at no cost to yourself, and the right to remain silent.

Understanding all of these rights, do you give up your right to a jury trial and the other rights? Do you understand these rights and give them up?"

"THE DEFENDANT: Yes, ma'am.

"MS. CHEN: With respect to this conviction, do you admit or deny?

"THE DEFENDANT: Admit.

"MS. CHEN: Counsel, do you concur in the –

"MR. RICH: Join in the waiver and concur in the admission.

"MS CHEN: Thank you. [¶] People join.

"THE COURT: The court accepts the waiver."

"A defendant who admits a prior criminal conviction must first be advised of the increased sentence that might be imposed. [Citations.] However, unlike the admonition required for a waiver of constitutional rights, advisement of the penal consequences of admitting a prior conviction is not constitutionally mandated. Rather, it is a judicially declared rule of criminal procedure. [Citations] Consequently, when the only error is a failure to advise of the penal consequences, the error is waived if not raised at or before

sentencing." (*People v. Wrice* (1995) 38 Cal.App.4th 767, 770-771; see also *People v. Walker* (1991) 54 Cal.3d 1013, 1022-1023.)

The transcript of the proceedings surrounding the admissions demonstrates that the trial court did not inform Bonner about the direct consequences of his admission. However, the information indicated that the effect of the special allegation was to add five years per prior to Bonner's sentence. Further, the pleadings informed him that he was admitting a serious felony. Indeed, the information specifically alleged "pursuant to Penal Code section 667(a)(1)" that Bonner suffered a prior conviction under section 245, subdivision (a)(1), and that the prior conviction was "of a serious felony." Further, the prosecutor's sentencing memorandum, filed before sentencing, set forth a calculation of Bonner's sentence and clearly showed the addition of five years to his sentence as a result of the prior. Bonner was represented by counsel throughout the proceedings. At no time was an objection interposed to the trial court's failure to inform Bonner that he was admitting a serious felony or inform him about the consequences of his admission. As a result, any error in the trial court's failure to so notify him is waived. (*Wrice*, *supra*, 38 Cal.App.4th at pp. 770-771; *People v. Jones* (2009) 178 Cal.App.4th 853, 858.)

DISPOSITION

The judgment is affirmed.

MOHR, J.*

We concur:

FLIER, Acting P. J. BIGELOW, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.